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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/657,679	09/08/2000	Marc A. Edlein	D-43378-01	2639

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EXAMINER

NOLAN, SANDRA M

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 10/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



**Office Action Summary**

Application N .

09/657,679

Applicant(s)

EDLEIN ET AL.

Examiner

Sandra M. Nolan

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Pri d for R ply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 August 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Pri rity under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6</u> . | 6) <input type="checkbox"/> Other:  |



## **DETAILED ACTION**

### **Claims**

1. Claims 1-55 are pending.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on March 25, 2002 (Paper No. 6) was considered by the examiner.

### ***Rejections Withdrawn***

3. All of the 35 USC 103 rejection set out in the Office Action of February 27, 2002 (Paper No. 5) are withdrawn in view of the arguments set out in applicants' response of August 5, 2002 (Paper No. 8).

### ***New Rejections***

#### **Claim Rejections - 35 USC § 102**

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).



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6. <sup>4-9, 12-13, 17, 19-20, 23-27, 30-34, 36-38, 42-46, 50-55</sup>  
Claims 1, 2, ~~6-9~~, ~~19-20~~ and 27-28, 33-34, 37, 42, 44, 45-47, and 54-55 are  
rejected under 35 U.S.C. 102(e) as being anticipated by Mossbrook (US 6,231,953; filed  
February 9, 1999).

Mossbrook is the US equivalent of WO 00/47683, which was included in the  
references cited in Paper No. 6.

Mossbrook teaches multilayer films in which one layer contains an antifog agent  
and a radiation cured layer is applied thereover. See col. 2, lines 62-64, col. 8, lines 12-  
17 and col. 5, lines 14-20 and col. 9, lines 7-10. The films have total free shrink of at  
least 10% (col. 8, line 42). The films can be used to overwrap plastic or foamed trays  
(col. 9, lines 51-52).

The other properties recited in the rejected claims are deemed inherent in view of  
Mossbrook's use the same inks/varnishes on the same substrates.

The examiner deems the e-beam cured coatings of Mossbrook to be both inks  
(i.e., coatings with colorants) or varnishes (i.e., coatings with or without colorants).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all  
obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set  
forth in section 102 of this title, if the differences between the subject matter sought to be patented and  
the prior art are such that the subject matter as a whole would have been obvious at the time the  
invention was made to a person having ordinary skill in the art to which said subject matter pertains.  
Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148  
USPQ 459 (1966), that are applied for establishing a background for determining  
obviousness under 35 U.S.C. 103(a) are summarized as follows:



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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1-7, 11-19, 25-32, 34, 36-45 and 52-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mossbrook in view of Kawahata et al (US-5,019,202).

Mossbrook is discussed above.

It fails to teach the use of thermosetting coatings.

Kawahata teaches the use of coatings that cure by either thermosetting or radiation curing techniques as top coatings on decorative sheets (abstract; col. 7, lines 14-18). It teaches, at col. 7, lines 9-12, that the method for curing the top coating is a function of the type of resin used therein.

The patents are analogous because both deal with outer coatings for substrates.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the heat used in the thermosetting curing mechanism of Kawahata for curing the outer coatings of Mossbrook in order to lower the cost of the curing process, since heat curing is less expensive than radiation curing.

The motivation to employ the heat curing of Kawahata in making the coatings of Mossbrook is based upon the expense associated with the use of radiation curing.

It is deemed beneficial to employ heat curing techniques instead of e-beam curing in order to lower the cost of the coating/packaging process.



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w/ 7  
10. Claims 1-10, 12-13, 16-35, 37-38, and 40-55 are rejected under 35 U.S.C. 103(a) as being unpatentable Dionne (CONVERTING Magazine, January 1, 1998, pp. 2-3) in view of Lu (US 5,451,460).

Dionne teaches that foods may be packaged using coatings that are UV-beam ("UV") or e-beam ("EB") cured that involve layers between the radiation cured coatings and the foods that are packaged (page 2, first column, first paragraph and page 3, second column, third full paragraph). On page 3, it says that the intermediate layer helps to minimize concerns re: migration of the radiation cured materials.

It fails to teach antifog coatings.

Lu teaches packaging films (col. 1, line 12) with heat-sealable, antifog coatings thereon (abstract).

The references are analogous because they both deal with packaging films.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the coatings of Lu to make layers between the food and the radiation cured coatings of Dionne in order to minimize migration concerns and improve the heat sealability thereof.

The motivation to employ the coatings of Lu as intermediate layers in the Dionne films is found on page 3 of Dionne, where migration concerns are addressed and in Lu's abstract, where the heat sealability of the films is discussed.

It is deemed beneficial to make films that are heat sealable and have minimal migration of radiation in order to help prevent spoilage due to contact with air and to prevent radiation-caused damage to the taste/texture of the food packaged.



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***Conclusion***

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 703/308-9545. The Examiner can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 703/308-4251. The general fax number for the art unit is 703/305-5436. The fax number for after final communications is 703/872-9310. The receptionist answers 703/308-0661.



S. M. Nolan  
Patent Examiner  
Technology Center 1700

SMN/smn  
09657679(9)  
October 11, 2002